IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 556 OF 2007
WITH
CIVIL APPLICATION NO. 774 OF 2007
IN
A.O.NO. 556/2007

Chandrabhan Babulal Yadav .. Appellant.

V/s.

The Municipal Corporaton of
Gr. Mumbai and Anr. .. Respondents.

Mr.Nitin Nikam for the Appellant.

Ms. Geeta Jogalekar for Respondents.

CORAM : S. A. BOBDE, J.

DATED : 09th JULY, 2007.

P.C. :-

. Heard. Admit. Taken up for final disposal by consent.

2. It seems that the findings of the learned trial court about which structure the appellant is not in possession of are not clear. The respondent corporation has issued notice under section 354-A to the appellant and the appellant has filed the suit for protection of the structure, which is the subject of the notice.

However, the trial court has observed as follows :

> "Nothing is on record to point out that the Plaintiff is in possession of the suit structure and the nature of existing construction prior to that notice. Therefore, for these reasons, I am of the opinion that the Plaintiff has failed to make out the prima facie case and balance of convenience in his favour, at this stage to grant the interim relief as prayed."

3. In the circumstances, it is difficult to reconcile this observation with the notice of the BMC, for stopping the work. The notice is issued to the appellant, presumably because the appellant is in possession and is carrying on work, which is not authorised. Therefore, it would be appropriate to direct the trial court to decide the Notice of Motion expeditiously and in any case not later than three months from the next date. Pending the decision of the notice of motion, both the parties shall maintain status-quo.

4. The appeal with the civil application is disposed of accordingly.

(S.A.BOBDE,J.)